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No. 01-2

IN THE

Supreme Court of the United States

JON ECHEVARRIETA,
Petitioner,

vs.

THE CITY OF RANCHO PALOS VERDES, a Municipal Corporation; THE CITY OF RANCHO PALOS VERDES CITY COUNCIL,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT
DIVISION FOUR

PETITIONER'S REPLY BRIEF

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REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Questions presented by Respondent's Brief in Opposition to Petition for Writ of Certiorari are:

Does a municipality's enforcement of a view ordinance which requires the destruction of one property owner's trees in order to grant a view to another property owner constitute a "Bona Fide Issue of Public Importance"? (*Brief in Opposition to Petition for Writ of Certiorari*, 4);

and

Is the lower court's analysis adequate when enforcement of a view ordinance mandates DESTRUCTION of trees instead of "merely" regulating "the minor and incidental matter of foliage height"? (*Brief in Opposition to Petition for Writ of Certiorari*, 6)

A. THE PETITION PRESENTS AN ISSUE OF NATIONAL IMPORT

The issue here is whether a city can enact an ordinance that requires a taking or destruction of one property owner's trees so that another property owner can have a view.

This is an issue that is important to every city that enacts and enforces a view ordinance.

The fact that Respondent's proposed actions would result in the death of Petitioner's trees is undisputed–the administrative record clearly indicates that the pine trees would die if chopped to five foot stumps as ordered by Respondent.

Yet, Respondent attempts to trivialize and minimize the undisputed fact of destruction by reiterating time and again the "minor" and "*de minimus*" (*Respondent's Brief in Opposition*, 7), nature of Respondent's action:

> "The Ordinance in question *merely* regulates the *minor* and *incidental* matter of foliage height."
>
> *Respondent's Brief in Opposition*, 6 (emphasis added)

Not only does Respondent conveniently fail to recognize the significance of its act of killing and taking mature thirty year old trees, but it extends this failure to the nation as a whole, insisting that this case has "no significance whatsoever to anyone but the smattering of local jurisdictions involved in view preservation."

Apart from making this questionable assertion without any support in the record or in its brief, Respondent's contention is false.

The instant case is one of first impression in California and sets an important precedent.

If left to stand, municipalities will be able to ignore established takings law, due process laws and non-conforming use laws and simply legislate the destruction of trees without necessity of compensating the tree owner.

Petitioner asserts that far from being "insignificant" (*Respondent's Brief in Opposition*, 4), this decision will determine the fairness and justice of treating the destruction of mature trees in the same manner as parking restrictions or height limitations on "junk piles". (*Respondent's Brief in Opposition*, 17)

B. A TAKINGS ANALYSIS MUST BE MADE PRESUMING THE DESTRUCTION OF PETITIONER'S TREES NOT THE TRIMMING OF PETITIONER'S TREES

Subsequent to Petitioner's Petition for Writ of Certiorari, this court, in *Anthony Palazzolo v. Rhode Island, et al.*, 121 S. Ct. 2448, 2001 U.S. Lexis 4910, after finding that the case was appropriate for determining the takings issue,

remanded the matter to determine the petitioner's claims under "the *Penn Central* analysis." (*Palazzolo v. Rhode Island*, 121 S. Ct. 2448, 2465)

While Respondent City contends that the court of appeal applied the criteria for determining a taking that was used in *Penn Central Transportation Co., et al. v. New York City, et al.*, 438 U.S. 104 (1978), and found that there was little or no economic impact on Petitioner (*Respondent's Brief in Opposition*, 12), it is clear that the court of appeal based it's finding of no taking on two questionable grounds:

1. First the court of appeal based its finding of little or no economic impact and therefore no taking on the mistaken assumption that Petitioner "has not been ordered to destroy his trees, but simply to trim them." (*Petitioner's Appendix A*14)

and

2. Second, the court of appeal based its analysis on the conjecture that it is "questionable whether there has been a diminution in value" and the ordinance "may indirectly increase the property's value" (*Petitioner's Appendix A*14).

These erroneous assumptions and speculations by the court of appeal substituted for a straightforward takings analysis.

The court of appeal cavils with distinctions between "per se" takings, "legitimate exercise of police power" and "traditional land-use regulations", (*Petitioner's Appendix A*13) never submitting the facts of the case to the test as enunciated in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), which test was the same as that set forth in *Penn Central*.

CONCLUSION

Petitioner is required by the City to bear the burden of the City's view ordinance.

In enforcing the view ordinance, the City is poised to enter Petitioner's property and chop three mature trees down to five foot stumps, leaving them to die.

The City's position is that such actions do not constitute a taking.

Petitioner asserts that he is entitled to an analysis as to whether the City's actions go too far and constitute a taking–an analysis which the court of appeal failed to make.

DATED: September 12, 2001

Respectfully submitted,

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